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FCC - MAILROOM

Before the
Federal Communications Commission

October 30, 2002

Federal Express
Ms Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street SW Room CY b402
Washington DC 20554

In the Matter of)
Application by Bellsouth Corp)
For Authorization to Provide)
In Region Interlata Services)
In the States of Florida and Ten:)

WC Docket 02-307

Dear Ms. Dortch,

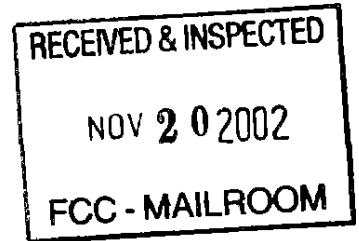
As per the Commission's rules, I am sending one original and four copies of Peggy Arvanitas' **Reply** Comments concerning Bellsouth's petition to Provide Long distance in Florida, pursuant to Sections 1.1206(b)(1) of the Commission's rules. If you have any questions, please feel free to contact me.

Sincerely,

Peggy Arvanitas
"The Lone Consumer"
Po Box 8787
Seminole, Fla. 33775
(727)-515-8519
Gotchababybell@aol.com

041

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Sincerely,

A handwritten signature in cursive script, appearing to read "Peggy Arvanitas".

Peggy Arvanitas
"The Lone Consumer"
Po Box 8787
Semmore, Fla 33775
(727)-515-8519
Gotchababybell@aol.com

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to Bellsouth's long distance Petition
FCC 02-307

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Tennessee)

Reply Comments of Opposition against Bellsouth's
Section 271 by Peggy Arvanitas "The Lone Consumer"

Peggy Arvanitas respectfully submits the following Reply Comments to the Federal Communications Commission (FCC) in response to Bellsouth's petition for authorization to provide In region Interlata services in Florida and Tennessee, specifically Florida.

Introduction

Peggy Arvanitas *is* pleased to have the opportunity to communicate the truth to the Federal Communications Commission ,but most notably, to uphold the validity and objectivity of the Section 271 Long Distance Application process that she feels is woefully lacking from the Florida Public Service Commission (FPSC) filing. The FPSC is tenacious in it's singular objective to assist a revenue generating opportunity in the millions of dollars for Bellsouth. The evidence from over two years of FPSC dockets against Bellsouth shows a turbulent existence and continuous breach of contracts and a mockery of the 1996 Telecom Act, this should not invite a multi million dollar long distance reward Markets are not open.

Evidence presented:

The Section **271** Florida PSC “Opinion” presented to ~~the~~ FCC was devoid of CLEC evidence as to the breached interconnection agreements by Bellsouth. By the specific measurement defined by the 1996 Telecom Act, Bellsouth is in violation of **major** portions of the 14-point checklist. OSS testing as a basic performance measure, The true problem is the Interface software that is not at parity, or in real time as Bellsouth’s retail division. this allows for abuse from the inception of Bellsouth’s marketing ~~department~~ to the slow service connection and repair for customers.

I will show a willful disrespect and bias of the FPSC’s policy, procedures, statutes, and communications that invalidated the legitimacy of this process. Specifically, the cover-up of a Whistleblower complaint filed by five current Bellsouth employees. The FPSC staff review was postponed for TWO YEARS that showed severe cramming violations of from the HISPANIC Bellsouth customer division in the nine state regions of Bellsouth’s interlata. And this was to cover-up the 1992 State Attorney’s Office Order violation actions that continued after the Settlement period ended. And that correspondence and emails by FPSC staff through the last two years showed an incredible bias against competitors to Bellsouth’s east coast by major FPSC senior attorney staff, a Commissioner, and General Counsel McClean.

I have found that the citizens do not have real choice, because of the bias for Bellsouth by the Florida Public Service Commission. And the timely manner and inability to in dealing with the complaints has caused harm to Florida consumers already using the CLEC’s telecommunication’s services. I will ask the US Justice Dept to investigate what the Florida Attorney General’s office did not and the Florida FDLE has not done. I will then **ask** the FCC to suspend the Florida application until such time as a full investigation is complete.

And I will do this Freely, with no bias. Because I am not employed by, nor work In a volunteer capacity for any party. I have no interest in the outcome, except as a pursuer of Truth; it is the right thing to do. And having been on major Florida PSC dockets since 1999, and I feel I have special expertise to review and disclose said facts. I have also filed over **15** Federal Communications Commission filings since 1999. They range from the FCC 99-200 Number Conservation docket. to the FCC 01-184 Cellular

Portability Forbearance. And the FCC should be so inclined to take these facts and opinions seriously **As**, I will also be sending **them** to every State Attorney General's Office and State PUC's and Governors in Bellsouth's nine state Inter lata.

Reply Comments

To allow the deregulation of Telephone companies, and give consumers choices with coinpetition, the United States Congress passed the 1996 Telecoin Act. Baby Bells and RBOC's were excluded from providing long distance until such time basic requirements for local phone service competition were met. The 14 point checklist (Section 271) requirements have been an integral part of this process. Unfortunately, Florida and other states these last two years have opted to ONLY provide a check review that the Operational Support Systems(OSS) are functional.

I will show, absent of serious Competitive Local Exchange Carrier (CLEC) and ILEC contractual review, the approval process has not satisfied the specific statutory requirement defined by the Legislature in the 1996 Telecoin Act. From the dockets of the Florida Public Service Commission, I will give four examples of violations that clearly rebut the Florida's approval for Section 271, Long Distance Petition.

I. Has Bellsouth met the requirements of Section 271 (C)(1)(a) Of the Telecommunication's Act of 1996?

1 Has Bellsouth entered into one or more BINDING agreements approved under Section 252 with unaffiliated competing providers of telephone exchange service?

in the docket 010740 of the Florida PSC, IDS Telecom in May 2001 asked for emergency relief. Quite specifically, because Bellsouth BREACHED

its interconnection agreement with IDS telecoin for failure to provide OSS and UNE's

at parity with those provided to Bellsouth's own retail division and retail customers

And in the middle of a pre-port process, called IDS' new customers and told them IDS Telecom was going bankrupt. This dossier had over 100 notarized statements from people leaving the Bellsouth network. From an FCC Chairman Powell, calling this type of conduct "growing pains", these were business customers who were disconnected for days. This included churches that needed voice mail and phone calls to do business. Florida's Bellsouth, trying to keep customers has made us a war zone. With numerous contracts (ICA's) being breached, and review coming before the Florida PSC have given me pause as to how the FPSC could have made a bland statement in their PSC docket 960786A opinion for Bellsouth's Section 271:

"...since there is no dispute that Bellsouth HAS ENTERED INTO agreements under Section 252 with numerous providers, and that there is SOME LEVEL of residential and business facilities-based competition, staff believes that by definition Bellsouth has satisfied parts...of this issue.(caps added)"

**Bellsouth in Violation of 1999 "UNE Remand Order"
FCC 3rd Report and Order and 4th Further NPRM FCC 99-238**

During the pre-port process, as customers were leaving Bellsouth's network and becoming new IDS Telecom customers: they were solicited by Bellsouth employees who were saying "IDS Telecom is going into bankruptcy ...and (you) need to choose a new carrier to avoid any disruption of phone service." (Exhibit A) This complaint of record was one of hundred's filed of record. The reason Bellsouth's call centers were able to solicit pre-port orders like this?

Bellsouth's interface to the OSS they gave to CLEC's was not at parity and real time with their own retail division's interface (software linkage to the OSS system).

And Mr Craemer of IDS telecoin said it best in his statements:

" LMS review of customer record for CLEC's is interfaced to alert Bellsouth retail that customers are leaving the database."

Bellsouth might have a nice OSS system that the FPSC tested and approved, but the software that Bellsouth gave the CLEC's to use is not at parity, not a "real time" system for ordering, provisioning, repairing, and BILLING (which we will discuss at great length later). If the customers leaving Bellsouth's network are solicited during a PRE-PORT process with scare tactics of bankruptcy and disruption of service, did Bellsouth satisfy the porting requirement of the 14 point checklist? (Section 271 (c)(2)(B)(xi) requirement of the 14 point checklist for portability).

I submit to you, unless software is available EQUAL to Bellsouth's AUTOMATED software interface to it's OSS they have failed in the past and will continue to fail performance measures in the future. This is a 1996 Telecom Act violation, AND an FCC order violation.

E. Does Bellsouth provide non discriminatory access to all required network Elements as per Section 271 (c)(2)(B)(ii)?

Of course, Bellsouth violations of contracts with Supra have been the Ali/Frazier Of the FPSC. The primal rage of Supra against Bellsouth was borne after a Bellsouth attorney in 1997 inserted pages and omitted others after a contract was signed by the Supra attorney and before it was filed at the FPSC. This act was by a Bellsouth attorney attempting to delete an obligation to provide UNE combos after the Eighth Circuit Court of Appeals ruled on AT&T vs. Iowa Utilities. UNE's gave Bellsouth pain. And then Bellsouth continued, after the FCC "319 Remand Order" in 1999, to refuse UNE's to Supra, in spite of the FCC order

Of course, this went before the Tribunal, an Arbitrator. In April 2001, Bellsouth was found to have breached the Interconnection Agreement. Bellsouth still refused to be in compliance. According to Supra's own FCC 02-307 October 10, 2002 filing:

"Supra has no ability to communicate to a customer a definite due date for the provisioning of service."

The Arbitral Tribunal noted that the OSS interface Supra uses to submit customer orders is LENS, and Lens cannot submit local service orders in real time."

And on June 5, 2001 the Arbitral Tribunal said Bellsouth needs to "provide REAL TIME electronic interfaces for transferring and receiving service orders and provisioning data."

Supra and Bellsouth's docket was heard simultaneously in the Arbitral Tribunal for contract dispute and the FPSC. Since the very basis was a breach of contract against Bellsouth, one can only wonder why the Senior Attorney of the PSC in Florida was not so inclined to read. For two very different outcomes, it begs for an exclusive FCC review for the legitimacy of the Section 271 process.

To test ONLY the OSS system, and NOT the interfaces, which vary from state to state is an ignorant travesty. OSS is like the Windows 2000 on my computer. But I can't go onto the Internet unless I have an INTERFACE like Internet Explorer. In the case of Supra and other Florida CLEC's the "interface" was LENS. It is a DOS (translation: REAL OLD) system, and FAXING is needed to complete the order. Bellsouth's RETAIL division uses an automated interface. This is NOT and has not been "PARITY" and "REAL TIME" ordering for over 3 years.

Supra has filed the Tribunal 2001 documents in FPSC dockets. The staff and attorneys have chosen to ignore them for over 2 years. Miami customers in Florida

do not want to pay high prices choose to do business with CLEC's like Supra REAL TIME and PARITY to Bellsouth's interfaces to pre-order, order, provision, repair, and BILL are central to providing service so that consumers are not punished and lose business with THEIR customers. So automated INTERFACE to the OSS system of Bellsouth is not a competition requirement; it's a **CUSTOMER necessity**.

And, as Bellsouth's FCC filings do not mention anything about the different interfaces to the OSS network per state and per carrier, the truth unfolds now in Florida.

In Miami Herald Nov. 8, 2002 article "Supra Pays Bellsouth \$3.5 Million", Alegiance

Telecoin says that :

"...since Supra doesn't have access to Bellsouth's ordering system, It (Alegiance) can't get customer service records which contain information needed for a provider switch."

Of course, Supra has some 40,000 pending orders that it can't process since Bellsouth has locked them out of the network because of a payment dispute.

A. No parity to Bellsouth's OSS Equals billing problems for CLEC's

Bellsouth in Florida would have us believe that all CLEC's are going bankrupt and have money problems. They have created an adverse playing field that seems to be anti competitive, not worthy of a Section 271 approval. The problem manifested itself in Florida Digital Network FPSC docket 020252tp, on March 15, 2002.

Bellsouth, refusing to abide by the terms of the CONTRACT (ICA) between themselves and Florida Digital Network, sent a bill and demanded payment in less than 30 days. There is a contractual format, though, by a mutually signed contract filed in the FPSC by both parties. First they sign a Notice of Discrepancy and serve it,

There are upper management reviews. Then, if dispute is still continuing after 120 days it goes before the Commission. Bellsouth just decided to DISCONNECT. This is NOT the caliber of company to be allowed long distance. We do not threaten to disconnect, refuse to allow new orders, have the retail division call up this company's customers and tell them their provider is going bankrupt. Is this an acceptable business practice? contracts. Obviously, this is the first the FCC has heard of this, so I will quote excerpts of this FPSC filing from Florida Digital Network:

“ Florida Digital Network (FDN) has been plagued by Bellsouth's repeated and systemic billing errors that erroneously and materially inflate the amount of Bellsouth's bills to FDN. These billing errors have included, but are not limited to: incorrect rates for unbundled network elements, usage and facilities, as well as bills for services that have been disconnected or never received by FDN.”(p26)

The forgoing problems are exacerbated by the disorganized & voluminous format of Bellsouth's massive invoices. These pervasive problems make it impossible for FDN to rely upon Bellsouth's invoices. FDN has been forced to undertake the extremely expensive & time consuming audits of each and every invoice it received from Bellsouth...because each bill is so rife with errors, delays by weeks the date on which FDN or any prudent businessman would agree to make payments.”(p23)

B. “The Bouncy Ball” State tariff or federal tariff! Pick one!

All of the three CLEC's have the same thing in common, Bellsouth's contract expired with each of them for almost a year. Bellsouth had reciprocal compensation issues with all of them, owing payments. And this created a turbulent atmosphere in the RE-NEGOTIATIONS. Bellsouth took it upon themselves to do a “force play.” AS we read Bellsouth's Answer and Counterclaim to Florida Digital Network, dated April 24, 2002 in the FPSC docket 020252, we see a disturbing challenge by Bellsouth against the FPSC state filed contracts vs FCC tariff tiled with different performance measures that contradict the ICA

Bellsouth and FDN report to each other percentage interstate usage (PIU) to “apportion between intrastate and interstate jurisdiction the services ~~of~~ switched local channel switched dedicated interoffice channel. Bellsouth and FDN report to each other a Percent Local Facility (PLF) factor to apportion between the intrastate access and local jurisdiction for the same services.” (Bellsouth page 24)

Bellsouth said that Florida Digital Network did not provide those figures and :

“Bellsouth was forced to bill FDN all the prior recurring charges on switched dedicated facilities from the FCC tariff...” (BS page 24)

To allow insult to injury, Bellsouth proclaimed to the FPSC:

“Bellsouth believes that this dispute is not subject to the Commission’s (FPSC) jurisdiction because it only involves Bellsouths imposition of FCC tariff charges on FDN for certain USOC’s.” (BS page 23)

The FCC allows tariffs to be filed by companies, pre-1996 Telecoin Act . There is no review PRIOR to these federal (and state) tiled tariffs. It creates considerable litigation to argue to remove them AFTER they have been filed in the state PUC’s. This consumer is asking then:

THE LOCAL CALLING AREA SCOPES ET ALL, DEFINED ONLY BY THE CLEC’S IN THE NATURE OF TARIFFS, IMPEDE THE COMPETITION OF THE CLEC’S BY LACK OF JOINT AGREEMENT FOR PORTABILITY AND RECIPROCAL COMPENSATION. THEREFORE, THIS IS IN VIOLATION OF 1996 TELECOM ACT, SECTION 251 “COMPETITIVE NEUTRALITY”. THEREFORE, SHOULD THIS NOT STRIKE DOWN STATE FILED **AND** FEDERALLY FILED TARIFFS THAT SUPERCEDE THE 1996 TELECOM ACT, A FEDERAL LAW?

This is something that needs to be addressed, as all slate Public Utility Commissions, having received control of their numbering resources by the FCC in 1999 and 2000 did so as an unfunded mandate, The litigious atmosphere with tariffs filed federally that have a far different interpretation of enforcement then the Interconnection Agreements of Bellsouth and CLEC’s have hampered the availability of competition for the consumers to enjoy in Florida

111. Does Bellsouth provide Reciprocal Compensation in accordance with Requirements of Section 271 (C) (B)(xiii)?

Bellsouth at it's finest was the Intermedia war. The state of FPSC Order 98-1347-TP issued October 21, 1998 for Intermedia/Bellsouth ICA. On Oct 8, 1999 Intennedia filed in Florida PSC that Bellsouth breached it's contract. There was a disagreement as to composite rates and elemental rates if Intermedia elects Multiple Tandem Access AND Bellsouth provides it. That did not occur, and the amendment was vague. Unfortunately for Intermedia, Bellsouth has a friend in the Florida PSC And his name is telecom attorney, Lee Fordham. As a matter of fact, he was on every one of the dockets we are reviewing today with rulings IN FAVOR of Bellsouth. But this Florida PSC docket was very flawed

The switch in question was a Norcross, GEORGIA switch. In Georgia, Bellsouth had A federal court order to pay composite rates for reciprocal comp to Intermedia. There was a GEORGIA state filed tariff. And the Georgia and North Carolina PUC's had two separate (ICA) hearings, where there's no mention of an amendment making ALL traffic billed at the elemental (60% cheaper) rate. Bellsouth had an outstanding balance owed of \$7.5 million Federal court orders, and the tariffed laws should have voided this interpretation at the State of Florida Public Service Commission level

However, that did not keep an outrageous ruling in Florida PSC to say that Bellsouth's vague amendment meant EVERY RATE throughout Bellsouth's interlata going over Intermedia's lines would be elemental. For the Florida PSC's interpretation of the law, Bellsouth NEVER PROVIDED MTA switch in question But this vague piece of paper overturned a federal court order for payment, and NC

and Georgia PUC's Interconnection Agreements of Bellsouth and Intermedia filed as well as state tariffs that were NEVER FILED with this same language to give Bellsouth a 6006 reduction in a newer wired network of a competitor throughout The INTERLATA.

This is not the only instance in Florida of past grievances with Bellsouth's breach (not binding) contracts and refusal to pay reciprocal compensation. Filed in the Florida PSC now, as of November 7, 2002 is docket 021132. Bellsouth owes, as per contract over \$300,000 in ISP traffic revenue as per the contract. Bellsouth is refusing to pay Global Naps revenue, refusing to file the grievance before the FFSC as per the interconnection agreement, and threatening to DISCONNECT the company. And as Global Naps files before the FFSC, my next guess is, Bellsouth will tell **the** FPSC as it did in Florida Digital Network's docket that it's a federal tariff, and the ~~FFSC~~ ~~FFSC~~ does not have jurisdiction. (Exhibit B)

How did this happen?

Then, after reading poor interpretations of the law, one wonders how this could occur. There is a long record in Florida PSC of ignoring legitimate evidence. **An** example: Supra's filing in docket 001305 has Tribunal Arbitral findings that, October 1999 demanded that Bellsouth allow an audit to Supra AS PER THE FLED INTERCONNECTION AGREEMENT. Three years later, this has not occurred. According to Supra's FCC02-307 October 10, 2002 filing,

"Bellsouth will not give bill accuracy certification Section 12 att 6."
Supra says, without the auditing, it "cannot verify the date starts of service actually began for its customer"

But the most severe review I will retell will involve the chronology of events that

have escalated the Bellsouth Supra war That is the FPSC staff member that shared proprietary Supra information to Bellsouth prior to a hearing on the interconnection agreement. The FPSC staff and attorneys. acknowledgement and cover-up to PSC Counsel and possibly a Commissioner. The **quick** termination, and omission of the facts in internal Reports of the FPSC made things worse. But the firing of Kim Logue and four months later deciding an investigation is inconclusive because the PSC let her go to military exercises first, and said later they could not interview her because she **was** gone was shocking:.

We will explore the chronology in the next chapter, and ask the FPSC and FCC if they think that the exuberant need to PUSH THROUGH Bellsouth's long distance petition allowed the illegality and collusion with Bellsouth officials with FPSC on all previous UNE contract disputes. We will also in the next chapter review A Bellsouth Whistleblower complaint that was buried by the FPSC for two years, And then it was dismissed. This, I believe **will** show that the Florida PSC "opinion" for Bellsouth's Section 271 should be dismissed, and indefinitely postponed, as it is biased.

IV. Collusion by Florida PSC in Supra/Bellsouth bias for Bellsouth Supra's UNE docket

The Interconnection Agreement between Supra and Bellsouth expired in June 2000 and in September 2000 Bellsouth sought Arbitration on a new contract. The FPSC gets interesting, as Supra, feeling there was a bias by PSC for Bellsouth, subpoenas over a year's worth of staff, Commissioner and PSC attorney emails from their computers. The results, to show the attempted cover-up by FPSC officials.

March 16,2001- Lee Fordham attorney on case sends einail to Kim Logue about motion by Supra to reschedule a hearing.

“Good Morning **Kim .Commissioner Jaber** came up with what I thought was an excellent plan on this motion..we are calling their hand and granting their motion to reschedule, but made it earlier. (caps) Bellsouth *is* delighted with this resolution.

May 2,2001- Kim Logue sent cross examination questions to Bellsouth before a hearing, given to staff froin Supra. These were proprietary.

July 2001 –Kim Logue, Mary Bane (Director of PSC),**Walter D’Haeseleer** Director of Telecommunications PSC) **Sally Simmons** (bureau chief) **Mr McClean** (PSC General Counsel) **all** KNEW of this illegal disclosure by Kim Logue.

(September 11,2001- PSC of Florida strikes out all CLEC direct testimony against Bellsouth for the Section 271 hearings, only OSS testing)

September 21,2001-PSC Inspector General **John Grayson** sends a letter to Sally Simmons 'What is going to be done?' The notes ask for Logue's resignation "Ask for resignation on 9/24." Then Simmons-"did noon on 9/25 copy held by Bane"

September 26-27 2001-KIM LOGUE, everyone knowing she had shared proprietary information with Bellsouth of Supra's, they send her in on another Supra hearing. This time, to arbitrate a key interconnection agreement. Still nothing disclosed to Supra until After the hearing.

(October 2001-Jeb Bush's assistant receives email from Lila Jaber asking him to visit FCC Commissioner Martin and tell them Florida needs markets open to Bellsouth for long distance.) Lila Jaber says "The meeting will be especially important especially because the FCC has to give the ultimate approval for Bellsouth's application..."

October 5, 2001 –Harold McClean PSC General Counsel sends letter to Supra disciosing the Commission had uncovered wrongdoing by Kim Lope.

Mid-October 2001- emails from Lila Jaber, as Chairman, having converstations with Bellsouth representatives about the Supra! Bellsouth dockets

November 2, 2001- Notes by John Grayson PSC inspector General notes "Walter/Beth> minimize damage" "Thiswas a high level meeting with Bane, D’Haesleer, Salak, Simmons

From review of the emails, (in articles as exhibit C) from the South Florida Business Journal, "Commission acts called Falsification" in July 2002, one wonders why rhe

FPSC, knowing that there might be a bias, would continue to insist on hearing the docket. The process was compromised. From Lee Fordham PSC attorney's conversation on TACTICS to deal with Supra's motions with Chairman Lila Jaber, it is darker. Our Chairnan was very busy with conversations with Jeb Bush on behalf of Bellsouth And FCC Michael Powell on behalf of Bellsouth's petition. (Exhibit D) Then the question, from this consumer is "Where is the objectivity?"

Mike Twomey, President of Florida Watch said it best,
"If there is some kind of pre-disposition from a Coinmissioner to approve Bellsouth's entry into long distance without seeing the evidence yet and without a hearing-that's troubling."

So, still the FPSC would not address a motion by Supra to have its reconsideration against the PSC Order heard by an Appeals Court The FPSC knew before a key evidentiary hearing that if the truth were disclosed, the outcome would not have been for Bellsouth General Counsel sends a letter AFTER the hearing, in attempt to cover **up** the truth But Supra subpoena's emails from FPSC Commissioners, Attorneys, and staff to disclose what is exhibited in newspaper articles show a cover up. And now, the FPSC ha5 the audacity to call the Section 271 petition for Bellsouth a fair hearing, and approve them? And, four months before a Governor's election ,the FDLE Investigation against Lila Jaber, and a 22 page Ethics coinplaint are on **hold**.

Because some Of you in Washington DC think little of our Florida Statutes because of the poorly written ones (FS 102.1 I6 and i02.118) that decided a Presidential election, let me quote you a better one!

Our Chairman Lila Jaber had numerous emails with officials concerning Supra's Dockets with Bellsouth officials These are the subpoenaed ernails Supra got a court

Order to remove from the FPSC computers. Although we are still waiting for the 22 page Ethics complaint to be forthcoming of Jaber's behavior, I was reminded that now Lila Jaber has submitted many UNE changes before the FCC in an effort to deal with the dockets before the FCC concerning UNE's. Of course, this is after the discovery of subpoenaed evidence and FDLE Investigation of PSC staff and Commission staff and Jaber and 22 page ethics complaint. The Florida Statutes are not forgiving, and Lila Jaber is an attorney, she should know them

Florida Statutes 350.042

- (4) "...receives an ex-parte communication relative to a proceeding must place on the record of the proceeding copies of written communication and oral communications received."
- (6) "Commissioner who knowingly fails to place on the record any such communications be in violation of the section., within 15 days of such a communication is subject to removal and may be assessed a civil penalty not to exceed \$5,000."

But this Supra scandal is not the biggest faux pas of the Commission. It was a Whistleblower coinplaint tiled in May 1999 by five brave Hispanic employees from Bellsouth's call center. One woman, after being terminated for reporting it to the Union and the FPSC, was terminated by BELLSOUTH. She filed a Whistleblower lawsuit in Federal Court. Of course, as my evidence has shown, the FPSC is overflowing with compassion for Bellsouth's needs. The Bellsouth complaint by employees was filed in MAY 1999. Then May 2001, two years later the FPSC finished their Investigation. It was riddled with inconsistencies, and the conclusion contradicted the body of the 80 page work. I have taken upon myself to attach the initial lawsuit filed in 1999 by Sandra Padron's attorney. And the staff analysis is reviewed for you in the next section.

V. Bellsouth Whistleblower complaints showing cramming violations
A repeat of a Florida attorney General Court order from 1992
For CRAMMING- involving 9 states of Spanish speaking Hispanics

October 9, 1992, because of severe “cramming” that occurred within Bellsouth from 1990-1991 and a lawsuit against it. Bellsouth entered into an agreement with the Florida State Attorney General’s office. Bellsouth agreed to certain performance and review measures to curtail this excess billing on customer’s phone bills without their permission. In one 130 person phone room is a group of Spanish speaking young employees in Miami. Most of Bellsouth’s call centers are in Miami, as they pay \$7-\$8 an hour. ALL OF THE STATES SPANISH SPEAKING CALLS come through the 130 person call center that Sandra Padron worked in.

Mrs. Padron was familiar with the 1992 State Attorney Office’s court order for performance for Bellsouth. She had worked for the company since 1990, and during that period, was a monitor; listening to fellow employee’s phone calls. But Bellsouth’s period of review ended in 1998, and it was then the illegal practices were encouraged and tolerated to fill sales quotas handed down from the Atlanta Bellsouth headquarters. The sales quotas that I-lispanic (mostly women) in Miami had to meet were very high, and the majority of the girls were failing their quotas and facing possible termination. And this was evident in the Florida May 2001 PSC report, as the percentage of failed sales quotas by employees were blacked out.

In late 1998, Padron challenged her supervisors as to the cramming going on by desperate employees. She was rebuffed. Then she BRAVELY tiled a Florida PSC

complaint with ~~four~~ other employees explaining the specific violations, providing illegal scripts that violated FPSC Rule 25 (the initial contact, employees must give basic service price to new customers FIRST) and other evidence. That was May 1999. For a month, no response, so she sent it to the Florida Attorney General's office. No response. She sends the Attorney General's office CERTIFIED MAIL and then in late June 1999, the Florida PSC acknowledges her complaint. She and the others also filed a complaint against Bellsouth with the new Union representing the workers. During that period, she was excessively monitored and threatened. Then, after 10 years of rave employment reviews, she and the others were terminated. The originally filed lawsuit indicating the charges against Bellsouth is exhibit E in this filing.

A. Florida PSC Report of Bellsouth's Sales Methods and Practices May 2001 report - filed two years after complaint

The biggest concern, after reading this report, was why the FPSC took *two* years to the date to publish the report. The complaints got bounced around internally in the FPSC From June 1999 until November 1999. Then according to FPSC's Bureau of Regulatory Review report, (1.3 Methodology):

“The PSC staff said they were on site at Bellsouth at the centers for monitoring and interviewed each employees from the complaint.” (page 4)

This is a lie, as Sandra Padron was terminated in July 1999. And she was interviewed in her attorney's office in Miami as she had just filed a Whistleblower Lawsuit Bellsouth terminated three employees immediately who refused to recant. The **purpose** of the FPSC taking their time to file their findings'? Bellsouth was given time to set up policies And procedures That way in 2000, when the FPSC monitored and reviewed

documents, Bellsouth's explanation was that they had right-sized their operation. One wonders what Butterworth was doing during this time? Bellsouth was in breach of a previous CRAMMING federal lawsuit court order. Surely, he was participatory in the safety of citizens, in Florida and elsewhere? Well, he passed the buck.

"Information regarding Bellsouth's business practices was also gathered through responses... information requests made by the Office of Attorney General in its investigation in this matter." (page 4)

And of course, who did the Florida PSC give the report to before the filing? To the Governor? The Office of Public Counsel? The Attorney General's Office? NO!
The Florida PSC gave the report TO BELLSOUTH!

The following is in the 1.3 Methodology section:

"Once an analysis was concluded, a draft report was written provided to the company to VERIFY ACCURACY and to address issues reported to the use of potentially confidential material in the report." (page 4)

This information was to substantiate the claims made by the Whistleblowers that Bellsouth's "sales quotas" as to the company's projected revenue needs created an environment for the workers. The "report cards", a greater majority from the Report that were Failure from the audit, created an atmosphere to CRAM, or illegally put charges on people's bills. According to the Report, Representative's Report Card (section 3.3.1):

"In July 1999 (the month of Padron's termination) the monthly revenue objective for a sales representative was 435,300 (parenthesis added)."

And after the termination of Padron et al, did the Union stepped forth and protect the workers? No, they insisted Bellsouth remove the evidence (failing grades from the tiles.

"Bellsouth removed disciplinary actions taken against sales and service reps from 1998 to May 1999 (coincides with whistleblower filing) for failure to obtain sales goals " (parenthesis added) (page 4)

Later, Bellsouth would even refuse to turn over the report their attorneys did after the termination of Sandra Padron. The majority of the Florida PSC report that was filed two years later in May 2001. It has major sections of the report BLACKED OUT. Sections blacked out were the staff findings that the PSC found truth in the allegations of the Whistleblowers complaint. In over fifteen different places, the FPSC Report made recommendations to Bellsouth reasonable sales quotas would assist in compliance of disclosure rules for basic services, as per Rule 25

The other major complaint brought by Sandra Padron was that the script they were made to use by the Supervisors gave the "Complete Choice Plan" as a class of service. The beginning of the script was a \$5 quote for only 30 calls a month. Then the Bellsouth's interlata's Spanish speaking new customers were told of the \$30 Complete Choice Plan. Only at the very end of a 5 minute script did one sentence suggest there was unlimited local calling available for \$10.81

The main argument by Bellsouth and the FPSC was about the definition of the word "INITIAL" as it appears in the context of the FPSC Rule 25-4.107:

“ . At the time of INITIAL contact, each local exchange telecommunications company shall advise the person applying for or inquiring about residential or single line business service of the rate for the least expensive one party basic local exchange telephone service available to him unless he requests specific equipment or services.”

Initial would appear to Sandra and I as “ A I THE BEGINNING.” The FPSC report Affirms this over six times throughout the body. Then becomes vague at the conclusion.

“The FPSC Rule 25-4.107 does not specifically state when during initial contact with the customer the company should disclose the basic service ...believes the spirit of the rule is not fulfilled under Bellsouth's current practice.” (page 38)

Bellsouth responds that no customers calls in and say they're confused; but they would be talking to the same customer service reps who need sales quotas tilled. Make sense? Remember, we are talking about Spanish speaking future customers in nine states .They aren't knowledgable about phone service or the process. The Choice Plan has call waiting, caller ID and voice mail, great revenue features that the FPSC was so kind as to leave -'proprietary" and not make Bellsouth disclose in The 1999 Legislature Report. A big reason we have high access fees expensive plain old telephone service; these revenues do not absorb their prorated share of switch and wire costs in use of the Baby Bell's network

And the Report stated in the conclusion before dismissing this with no action:

"The Bureau of Regulatory Review (FPSC) concludes that Bellsouth is capitalizing on confusion among customers who do not understand their options and that Bellsouth's sales techniques make full disclosure about the availability of basic service secondary to the company's efforts to sell its ancillary products and services." (page 66)

If you are Spanish speaking, the Truth in Billing statement has no provisions for you to read information about your new service after a verbal order is placed. The Truth in Billing is in ENGLISH According to the FPSC report:

"Upon customer request, Bellsouth will generate a verification letter in Spanish. The Spanish verification letter option is ONLY AVAILABLE TO BELLSOUTH'S FLORIDA CUSTOMERS UPON REQUEST"(caps added) pg 29

Is there a concern by ANY State Public Utility Commission that for profits, Bellsouth is praying upon the ignorance of your state's consumers? Does this concern any Attorney general offices in Bellsouth's area to defend their people?

How is Sandra Padron, you are dying to ask me? Bellsouth is, at this time, trying to dismiss her federal lawsuit. Although this woman in Miami has her own problems, she still helps people with correct their phone bills. They almost always have a \$30 Complete Choice Plan, and did not know there was cheaper service. Note this: when Bellsouth fired her, she had to get government assistance. She has problems paying her bills because she can't get a reference from the Bellsouth company where she worked for 10 years.

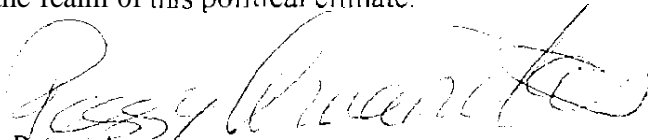
Summation

Chairman Powell, you don't need to overturn the FCC UNE Remand Order.

In Florida, we have yet to see Bellsouth be in compliance with it. The OSS testing is NOT an interpretation of the Section 271 for long distance

The lack of Interfaces (at parity and real time) equal to Bellsouth's retail division is harming consumers. The State of Florida PSC must not be biased, and they must represent all the public. They should have ordered Bellsouth to put in English and Spanish at the bottom of all customers' bills that basic local phone service is \$10.81

The Supra docket and the Whistleblower complaint show the FPSC facilitating a billion dollar Bellsouth. The bias has become collusive with investigations that are pending. This must end. Please suspend all votes for the Section 271 for Bellsouth's states of Tennessee and Florida until such time as an investigation can be done outside the realm of this political climate.



Peggy Arvanitas
PO Box 8787
Seminole, Fla 33775
(727)-515-8519
pegremax2000@yahoo.com

Before the
Federal Communications Commission

Certificate of Service

I, Peggy Arvanitas certify that I sent by regular mail (* for fax) to the below mentioned individuals on Nov 1, 2002 my Reply Comments Opposing Bellsouth's Region Interlata Services in the states of Florida and Tennessee.

✶ Chairman Michael Powell
Federal Communications Commission
445 Twelfth Street SW
Washington DC 20554

Diane Harmon, chief
Network Services Division
445 12th street SW
Washington DC 20554

Commissioner Kathleen Abernathy
Federal Communications Commission
445 12 street SW
Washington DC 20554

Lila Jaber Chairman
Florida PSC
2540 Shumard Oak Blvd
Tallahassee, Fla. 32399

Commissioner Kevin Martin
Federal Communications Commission
445 12 street SW
Washington DC 20554

✶ Luin P fitch Jr
US Dept of Justice, Anti Trust disn
1401 H street NW #800
Washington DC 20530

Commissioner Michael Copps
Federal Communications Commissio
445 Twelfth Street SW
Washington DC 20554

Praveen Goyal
Covad Communications
6001 14th street NW #750
Washington DC 20005

J. Brad Ramsay, atty
NARUC
1101 Vermont Avenue NW #200
Washington DC 20554

Marybeth Banks
Sprint
401 9 street NW #400
Washington DC 20004

Chief Dorothy Atwood
Common Carrier Bureau
Federal Communications Commission
445 12th street SW
Washington DC 20554

Keith Seat
Worldcomm
1133 19 street NW #721
Washington DC 20036

Chairman
Georgia PSC
244 Washington St SW
Atlanta, Ga 30334

Jonathan Ranks
Bellsouth
1133 21st Street NW #900
Washington DC 20036

✂ Charlie Beck
Office Public Counsel, Florida
111 West Madison Street
812 Claude Pepper Bldg
Tallahassee, Fla 32399

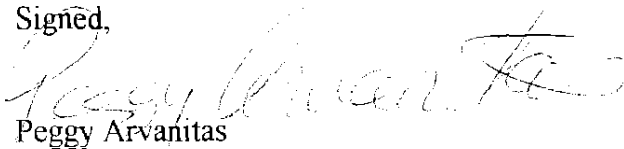
Qualex Intl
Portals II Rm CyB402
445 12th Street SW
Washington DC 20554

Brian Chaihen
Supra
2620 SW 27th Ave
Miami, Fla. 33133

✂ Phil McClelland
Penn. Consumer Advocate
555 Walnut St 5th floor
Forum Place
Harrisburg, Penn. 17101

Janice Myles
Wireline Bureau FCC
455 12th street SW 5C327
Washington DC 20554

Signed,



Peggy Arvanitas
The Lone Consumer

Before the
Federal Communications Commission

Certificate of Service

I, Peggy Arvanitas certify that I sent by regular mail (* for fax) to the below mentioned individuals on Nov 1, 2002 my Reply Comments Opposing Bellsouth's Region Interlata Services in the states of Florida and Tennessee.

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Wireline Bureau FCC
455 12th street SW 5C327
Washington DC 20554

Signed,

Peggy Amanitas

The Lone Consumer

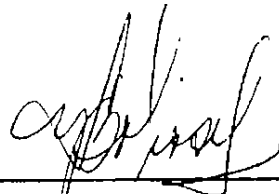
AFFIDAVIT OF LAURA TIRSE

STATE OF FLORIDA
COUNTY ~~OF~~ MIAMI-DADE

BEFORE ME, the undersigned authority, personally appeared Laura Tirse who after king duly **sworn**, did ~~depose~~ and say:

1. All statements made herein are made of my ~~own~~ personal knowledge and are true and correct to the ~~best~~ of my knowledge and belief
2. I ~~am~~ the General Manager of M & L Interiors. Our physical address is 680 West 84th Street, Hialeah, Florida 33014. My business telephone number is (305)819-7506.
3. M & L Interiors ~~has~~ been ~~an~~ IDS Telcom customer for local services since January 2001.
4. On April 5, 2001 I personally received a telephone call from ~~an~~ individual who stated her ~~name~~ was Jaime Lee. Jamie ~~Lee~~ stated that she ~~was~~ calling on behalf of BellSouth and that her records indicated that ow local services are ~~being~~ provided by IDS Telcom I ~~asked~~ her if she was with BellSouth and she stated that her company ~~is~~ part of BellSouth
5. Jamie Lee then stated that "IDS Telcom is ~~gomg~~ into bankruptcy and ~~we~~ (M & L Interiors) needed to choose a new ~~carrier~~ in order to avoid any disruption of telephone service".
6. I indicated to Jamie Lee that I was not aware of IDS having any trouble and that I would need to ~~confirm~~ that information before ~~making~~ any decisions regarding or telephone services. Jamie Lee then gave me the number (561) 616-9000 and asked that I contact her if ~~we~~ decided to make the switch ~~back to~~ BellSouth.
7. I immediately contacted IDS Telcom and ~~spoke~~ with the receptionist who transferred me to Connie ~~Mason~~. Ms. ~~Mason~~ assured me that IDS was not ~~going~~ into bankruptcy nor did it have any issues in that regard.
8. I then attempted to contact Jamie Lee at the ~~above~~ number and I ~~was~~ told by the receptionist that there ~~was~~ no one by the name of Jamie Lee at that ~~number~~.
9. Additionally, my office ~~has~~ been called at least two other times in the last couple of weeks representing the ~~same~~ kind of issue about IDS Telcom. Unfortunately, my employees received the ~~calls~~ and only reported ~~them to me~~. So, I instructed my employees to pass any further calls related to our telephone ~~services~~ to me. When BellSouth called again on April 5, 2001 the ~~call~~ ~~was~~ forwarded to me whereby I had the aforementioned discussion with Jamie Lee.

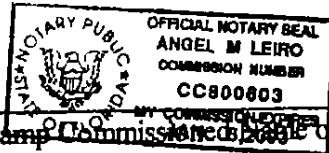
FURTHER AFFIANT SAYETH NOT:



Laura Tirse, Affiant

Sworn to and subscribed before me this 1st day of April 2001 by Laura Tirse who is personally known to me or who produced Florida Driver's License # T620-539-70-6105 identification. EXP. 4/21/01



(Signature of Notary Public - State of Florida)

(Print, Type or Stamp Commissioned Notary)

AFFIDAVIT OF ALVARO LOZANO

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

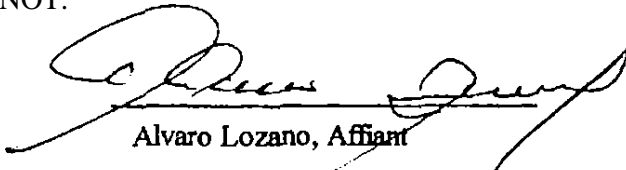
BEFORE ME, the undersigned authority, **personally** appeared Alvaro Lozano who after **king** duly sworn, did depose and **say**:

1. **All** statements made herein **are** made of my own **personal** knowledge and are true and correct to the best of my knowledge and belief.
2. I am the President **of** Interstate Beverage Corporation. **Our** physical address is **1915** West **8th** Avenue, Hialeah, Florida 33010. My business telephone **number** is (305) 883-6004.
3. I have been **an IDS** Telcom customer **since** August 2000 and IDS currently provides **local** and long distance **services** for my business.
4. **On** or about April **3**, 2001 I received the first of approximately Seven **(7)** *calls* to date from Ivan Cameron who represented **himself as** working for a **company** by the **name** of Telechoice. **His** number is (561) 616-9000. He further indicated that Telechoice **was** working on behalf of BellSouth's Win Back Department.
5. **Mr.** Cameron began insisting that I switch my local telephone services to **BellSouth** because IDS Telcom **was** "going **out** of business". Furthermore, BellSouth could **now** offer my business **savings** that match or beat what **IDS was** currently offering.
6. I questioned Mr. Cameron as to why BellSouth had not previously offered these **savings** to me before I switched my services to IDS. Mr. Cameron explained that due to recent government approvals, BellSouth could **now offer savings** **similar** to or better *than* IDS Telcom.
7. **Mr.** Cameron **continued to** be very insistent that I switch my services back to BellSouth and reiterated that IDS was going out of business. I told him that I would **have** to investigate his **claim** about IDS and that I **was** not prepared to **make** a decision at that time.
8. On April 6, 2001, **Mr.** Cameron **called** me again reiterating **that** IDS was **going out of** business and that I should seriously consider switching my services back to BellSouth in order to avoid any disruption of my services. I did not entertain a conversation at that time and ended the call.
9. **Mr.** Cameron has called every day **beginning** again on April **9**, 2001 **through** today April 12, 2001 and I suspect he will continue to call.

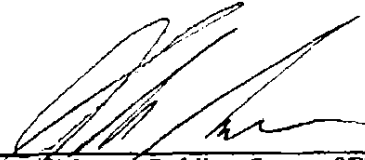
EXHIBIT D

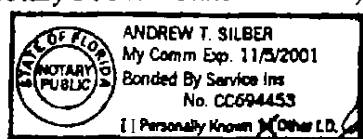
10. I contacted IDS Telcom and they have assured **me** that the representation **made** by Mr. Cameron is false and that they **will** bring this issue up with the appropriate authorities.
11. I am upset that BellSouth has made such representations concerning IDS Telcom because I do not want **to** feel as though my carrier **has** financial problems that would affect my telephone services in any way. I rely **on** my telephone services for my business and any disruption would be very costly. I **have** lost valuable time speaking with Mr. Cameron and having to investigate a matter, which **now** appears to be false. I want BellSouth to stop calling **my** business and **making** misrepresentations **as** stated above.

FURTHER AFFIANT SAYETH NOT:


Alvaro Lozano, Affiant

Sworn to and subscribed before me this 16th day of April 2001 by Alvaro Lozano who produced FL. DRIVER LICENSE as identification.
L254-000-48-006.


(Signature of Notary Public - State of Florida)


[] Personally Known [X] Other I.D. 4/16/01

(Print, Type or Stamp Commissioned Name of Notary)

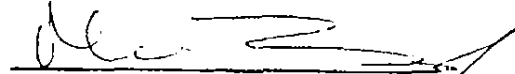
AFFIDAVIT OF MASON TOLMAN

STATE OF FLORIDA
COUNTY OF MONROE

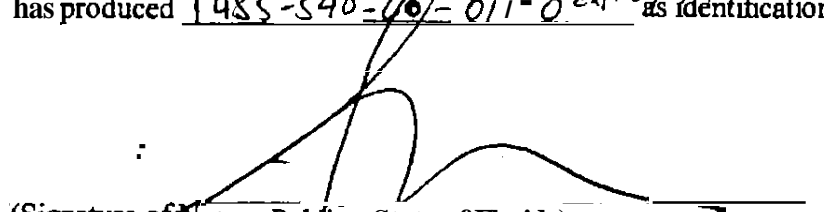
BEFORE **ME**, the undersigned authority, personally appeared Mason Tolman who after being duly sworn, did depose and say:

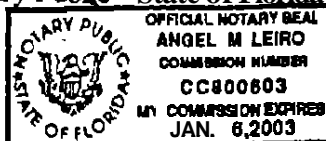
1. All statements made herein are made of my own personal knowledge and are true and correct to the best **of my** knowledge and belief.
2. I **am** the Executive Director of the Key West Innkeepers Association. **Our** physical address is 922 Caroline Street, Key West, Florida **33040**. My business telephone number is (305) 295-1334.
3. On June **6**, 2000—I authorized IDS Telcom to convert the above businesses' local telephone service from BellSouth to IDS Telcom. On June **20**, 2000 BeUSouth converted the service to IDS.
4. I understood that there would **be** no disruption of service during the conversion of my telephone service from BeUSouth to IDS Telcom. On the day the conversion **took** place, I found that I could not retrieve or receive any voice **mail** messages whatsoever at **any of** the above locations.
5. I contacted **IDS** Telcom and they provided a temporary pass code for access to the voice **mail** however, all the messages I had archived had been erased and were **un-**retrievable.
6. On or about February 26, 2001, I received a telephone call **from** a BellSouth representative offering local telephone services at a 25% discount **if** I signed a **term** contract. I informed the caller that I already enjoyed a **20%** discount off of the current BeUSouth rates through IDS and they do not require a contract. On **or** about March 5, 2001, I received an oversized postcard advertisement offering the same 25% discount.
7. I **own** and operate a very that busy association that is responsible **for all** the promotions for various Inns and Bed & Breakfasts. My staff and me rely on the telephone **service** and features for obtaining and servicing potential and existing customers, proprietors and guests. During the conversion and for **3** full days **afterward**, I lost **an** incalculable amount of business revenue due to the inoperability of the voice **mail** feature.

FURTHER AFFIANT SAYETH NOT:


Mason Tolmac, Affiant
mf

Sworn to and subscribed before me this 21ST day of March 2001 by Mason Tolmac who has produced T485-540-00-011-0 ^{exp. 01/01/02} as identification.


(Signature of Notary Public - State of Florida)



(print, Type or Stamp Commissioned Name of Notary)

AFFIDAVIT OF LEONORA SUGLIO

STATE OF FLORIDA
COUNTY OF PALM BEACH

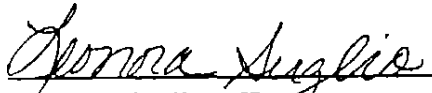
BEFORE ME, the undersigned authority, personally appeared Leonora Suglio, who after being duly sworn, did depose and say:

1. **All** statements made herein are made of my own personal knowledge and are **true** and correct to the best of my knowledge and belief.
2. I am the Administrative Assistant of Community of Hope Church. **My** name is Leonora Suglio and I am over 18 years of age. I am the Administrative Assistance of Community of Hope Church. Our physical address is 11388-B Okeechobee Blvd., Royal Palm Beach, Florida, 33411. Our telephone number is **(561) 793-8484**.
3. On Monday February **26, 2001** I arrived at Community of Hope at approximately 8:00 **AM**. I attempted to shut off the Voice Mail service and I found that it did not go through its usual procedure to shut off.
4. That morning I received a call from a Church member who had left a message that I was unaware of and unable to retrieve. Subsequently I received a call from another Church member who also left a message that I was unable to retrieve. When I was leaving for lunch, I attempted to **turn** on the voice mail service, and it would not connect, indicating to me that something was wrong with the voice mail.
5. Because the Church had recently subscribed to IDS Telcom for its local telephone services and I knew the conversion would be proceeding in the very near future, I contacted our telephone service agent Mr. Jeff McDonald to find out if the cause of the Voice Mail disruption was due to the conversion. Mr. McDonald verified through IDS that our pending conversion was scheduled for February **27, 2001** the very next day and indicated that there should be no disruption of services during the conversion.
6. So, because I was technically still a BellSouth customer, I contacted BellSouth. They verified that the conversion to IDS Telcom was in fact scheduled for February **27, 2001**. The BellSouth representative indicated that it was because of something IDS Telcom did in the conversion order that caused our Voice Mail to become inoperable and that I should contact IDS because BellSouth could do nothing for me even though the Church was still a BellSouth customer as of that time. I felt that because the Church was still a BellSouth customer, BellSouth should **fix** the Voice Mail issue immediately. The BellSouth representative stated she could do nothing more for me due to the pending conversion order, and ended the call.
7. In the morning of February **28, 2001**, I called BellSouth again because the Voice Mail issue had yet to be resolved. The person I spoke with was extremely rude and offered no information to assist me. She indicated that something was wrong with the IDS order however she refused to tell me **where** the problem was, stated she **could** not read the IDS conversion orders to see if there was an error in them that would have caused the Voice Mail to be canceled, but insisted that there had to be an error on IDS' orders and stated that because I was now an **IDS** customer, she could not speak with me about my services and I should call IDS.

EXHIBIT B

8. On March 1, 2001, the Voice Mail was still inoperable so I contacted IDS' Agent Support Representative, Amanda LaDue. Ms. LaDue placed a call to the BellSouth repair center and spoke with (Martha) while I held on the line for approximately one half hour. When Ms. LaDue came back on the line, she was noticeably upset and she stated that she had been spoken to very rudely by the BellSouth representative as well as having been misinformed regarding the problem and how to proceed to correct it. She explained that BellSouth (Martha) as well as others in the repair center refused to correct the mailbox until an order to add Call Forwarding was placed by IDS. This was unacceptable and made no sense because we would have Call Forwarding answering a mailbox that was not in service.
9. I again contacted BellSouth myself; spoke with Mr. Seimens in the business department and explained that Community of Hope Church receives various life and death calls from people in need of our assistance and counseling and that not having the messaging features was causing great concern which could have serious consequences as a result. This problem started when I was a BellSouth customer and got worse after I switched to IDS. I demanded an explanation from BellSouth as to why our Voice Mail went down while the Church was a BellSouth Customer and why did they not correct the problem then. I consider this a BellSouth error yet they refused to correct the problem.
10. I placed the BellSouth representative on the hold for just a moment and he hung up before I could get back to him.
11. Today, Voice Mail has been restored and I have yet to receive an explanation from BellSouth about this matter.

FURTHER AFFIANT SAYETH NOT:


Leonora Suglio, Affiant

Sworn to and subscribed before me this 16th day of March, 2001 by Leonora Suglio who is personally known to me or who produced _____ as identification.


(Signature of Notary Public - State of Florida)



Pamela L. Beach
MY COMMISSION # CC926847 EXPIRES
May 7, 2004
BONDED THRU TROY FAIR INSURANCE, INC.

(Print, Type or Stamp Commissioned Name of Notary)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

GLOBAL NAPS SOUTH, INC.
 Complaint and Request for Emergency
 Declaratory Statement Regarding
 BellSouth Telecommunications, Inc.'s
 Proposed Denial of Service

Docket No. 991220-TP

Date Filed: November 7, 2002

**GLOBAL NAPS SOUTH, INC.'S COMPLAINT AND REQUEST
 FOR EMERGENCY DECLARATORY STATEMENT REGARDING
 BELL SOUTH TELECOMMUNICATIONS, INC.'S
PROPOSED DENIAL OF SERVICE**

Global NAPS South, Inc. ("Global NAPS"), pursuant to Chapter 364, Florida Statutes, and Section 120.565, Florida Statutes, and Rules 28-105, Florida Administrative Code (F.A.C.) and 25-22.036, F.A.C., files this action before the Florida Public Service Commission, seeking an emergency Declaratory Statement and lodging a Complaint against BellSouth Telecommunications, Inc. ("BellSouth") regarding its Proposed Denial of Service to Global NAPS. In support of this action, Global NAPS states the following:

Background and Statement of Global NAPS' Interest in this Matter

1. Global NAPS is a certificated carrier in the State of Florida. Global NAPS provides facilities-based competitive telephone services in Florida through its switch located in Miami, Florida.

2. Global NAPS and BellSouth have entered into an Interconnection Agreement that provides for the exchange of traffic and compensation rates and conditions under which compensation is due with respect to the exchange of traffic. This Interconnection Agreement was approved by this Commission on September 7, 2001. Docket No. 991220-TP, Order No

PSC-01-1806-FOF-TP (Sept. 7, 2001). Accordingly, this **Commission** has jurisdiction to resolve disputes, including the instant dispute, arising under this Interconnection Agreement.'

3. Currently all or virtually all of the traffic that Global NAPs exchanges with BellSouth under its Interconnection Agreement is Internet traffic, *i.e.*, Internet **service** provider-bound "information access services".'

4. Regulation of intercarrier compensation related to carriage of information access services is within the sole and exclusive jurisdiction of the Federal Communications Commission ("FCC").³

5. Traffic originates ~~from~~ BellSouth's customers to Internet service providers who are Global NAPs' customers.

6. The carriage of BellSouth's traffic (and those independent carriers who rely on BellSouth for carriage of transit traffic) relies on transport being provided by BellSouth from its customers up to the point of interconnection (~~"POI"~~) with Global NAPs.

7. Global NAPs assumes financial and physical responsibility for traffic at the point of interconnection where the companies exchange their respective customers' traffic.

¹ The Interconnection Agreement, General Terms and Conditions. Part A, section 12, expressly states in pertinent part: "the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, either Party may petition the Commission for a resolution of this dispute."

² "Information access" was meant to include all access traffic routed by a LEC "to or from" providers of information services, of which ISPs are a subset. *In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996: Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand Report and Order, CC Docket No. 96-98 (rel. April 27, 2001) ("ISP Remand Order") at ¶ 44.

³ *Id.*

8. BellSouth has made repeated demands for payment ~~of~~ trunking/transport facilities. Global **NAPs** has disputed payment of such amounts⁴ pursuant to the processes agreed to by ~~the~~ parties in the Interconnection Agreement,

9. On or **about** October 31, 2002, **BellSouth** notified Janet Lema, of Global NAPs' Accounts Receivable group, that BellSouth demanded payment for such trunking/transport, or services to Global NAPs **would** be "Shut-down". A telefax containing **this** notification subsequently was forwarded to Robert **Fox** and/or Jeffrey Noack of Global **NAPs**.

10. **Contrary to** the terms of the Interconnection **Agreement**, **BellSouth has** not sought redress of its grievances **through** the Commission or through other legal **action(s)** in other forums, but instead **proposes simply** to deny Global **NAPs** service -- which is **in** clear contravention of the terms of the Interconnection Agreement. The Interconnection Agreement prescribes processes for resolving disputes, and those processes do not include allowing one party to simply **"shut down" the** other party's service.

11. Service denial would irreparably damage **Global NAPs'** customer relations, **and**, even more **importantly**, would deny BellSouth's customers (**as well as** the customers who rely on BellSouth facilities **to provide** transit services) access to the Internet.

12. To prevent the wrongful denial of **services** and prevent customer service outages, Global **NAPs** files this Complaint **and** Request for an emergency Declaratory Statement, and seeks an order from ~~the~~ Commission preventing BellSouth from unilaterally and **unreasonably** acting to "shut down" Global NAPs' service.

⁴Global NAPs has complied with the **process** prescribed in Section 3 of the **General Terms and Conditions, Part A, Interconnection Agreement** concerning billing disputes. The amount **BellSouth** asserts it is entitled to is currently \$184,969.28; Global NAPs is seeking charges of \$569,212.90. Thus, the net difference due to Global NAPs is \$384,243.62. **BellSouth** should not be permitted to threaten to "shut down" Global NAPs when **BellSouth** owes Global NAPs **money**.

Factual and Legal Issue

13. **At issue** in this matter is whether BellSouth may deny service to its customers, to independent carriers who rely on its services, and to Global **NAPs'** customers, **as** a result of a billing dispute regarding **trunking** and transport facilities which provide ISP-bound information access services traffic. Global **NAPs** contends that BellSouth may not do so under the **terms of** the Interconnection Agreement.

14. BellSouth asserts that under the Interconnection Agreement provisions, Global **NAPs** **is** responsible for payment of **trunking/transport** facilities. However, as noted above, intercarrier compensation is governed solely and exclusively by operation of federal law. To the extent that there **is** a conflict between federal law and contract provisions, federal law is controlling. As such, the intercarrier compensation regime contemplated in the ***ISP Remand Order*** provides for a balanced and complete recovery between carriers. The ***ISP Remand Order*** significantly limits the amount(s) due to Global **NAPs** when terminating ISP-bound traffic, but also provides that there be no origination charges on the traffic carried by **BellSouth**.⁵ As such, federal law precludes additional charges, such as those sought by BellSouth for

⁵ C.F.R. §§ 51.703(a)(2) and 51.703(b) preclude the imposition of additional charges for transport on the ILEC's side of the **FOI**.

trunking/transport.⁶ Indeed, intercarrier compensation for ISP-bound traffic is not an appropriate subject for an interconnection agreement because it is interstate in nature.’

15. Alternatively, even if such traffic were an appropriate subject for an interconnection agreement, BellSouth has failed to provide adequate notice required by operation of the parties’ Interconnection Agreement. Instead of abiding by the Notice provisions of the Interconnection Agreement, BellSouth provided notice to two individuals who were not authorized to receive such notice. To the extent that the Interconnection Agreement of the parties is relevant, which Global NAPs asserts it is not, this failure must be, at a minimum, rectified prior to BellSouth taking further action. Upon receipt of such notice, Global NAPs’ representatives notified Global NAPs’ counsel. It was only at this point that the parties held a conference call to discuss BellSouth’s proposed denial of service and Global NAPs’ assertion that such unilateral action would lead to customer outages as well as violate federal law.

16. On a conference call between the parties’ counsel, Global NAPs asserted that: (1) charges for trunking/transport violated federal law; (2) unilateral action by BellSouth to terminate services was a denial of due process as contemplated by the Notice provisions and implied good faith negotiations of contract provisions between the parties; and, (3) a denial of

⁶ Federal law also states that Bellsouth bears full financial responsibility for delivering Global-bound traffic from Bellsouth’s own customers to the single point of interconnection. See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, FCC 01-132, CC Docket No. 01-92, 16 FCC Rcd 9610, ¶¶ 70, 72 (Apr. 27, 2001) (“Intercarrier Compensation NPRM”); see also *In the Matter of Joint Application by Sprint - Florida Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, FCC No. 01-29, CC Docket No. 00-217, 16 FCC Rcd 6237, ¶¶ 233-235 (Jan. 22, 2001) (“Oklahoma/Kansas 271 Order”).

⁷ *ISP Remand Order* at ¶ 82, see also *In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and conditions and Related Arrangements with United Telephone Company of Ohio dba Sprint*, Case No. 01-2811-TP-ARB, *In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms and conditions and Related Arrangements with Ameritech Ohio*, Case No. 01-3096-TP-ARB, [Consolidated] Arbitration Award (May 9, 2002) at 8 fn. 7; In 01-724, the Commission determined that the FCC’s ISP Remand Order governs calls to ISPs. In Georgia, the 11th Circuit determined that the Georgia Public Service Commission could not interpret the interconnection agreement provisions.

service would create **chaos** not only among Global **NAPs'** customers, but **also** would deny independent customers and even BellSouth's own customers competitive access to the Internet.

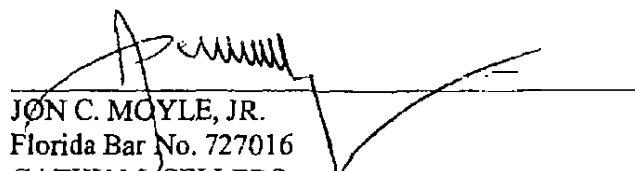
RELIEF REQUESTED

Global NAPs requests the following relief ~~from~~ the Commission:

17. Issuance of a Declaratory Statement, declaring that its ~~rules~~ and related state law ~~are~~ not controlling, but that federal law is controlling for purposes of determining appropriate intercarrier compensation related to "information **access**" traffic.

18. Alternatively, enter **an** Order **based on the** parties' Interconnection Agreement providing that unless and until such time **as** BellSouth has complied with (a) the required notice and other ~~relevant~~ provisions of the contract to resolve disputes and (b) sought legal **redress of** its grievance in an appropriate tribunal of **original** jurisdiction. **trunking/transport** facilities currently in-place and ~~as~~ required to provide continued service shall be provided for the carriage of information access traffic to/from BellSouth (and other carriers that rely on BellSouth for transit services) to Global NAPs without interruption.

Respectfully submitted,



JON C. MOYLE, JR.
Florida Bar No. 727016
~~CATHY M. SELLERS~~
Florida Bar No. 0784958
Moyle, Flanigan, Katz, Raymond *and* Sheehan, P.A.
The Perkins **House**
118 North Gadsden Street
Tallahassee, Florida **32301**
Telephone: (850) 681-3828

Hello from bizjournals.com! peggy arvanitas (pegremax2000@yahoo.com) thought you might like the following article from the South Florida Business Journal:

Exhibit C

Commission acts called falsification

Kevin Sale

"This is what the Public Service Commission knew and this is when it knew it," Supra Telecom is telling a state attorney in Tallahassee.

And what the PSC knew and when amounts to falsification of documents through misrepresentation, Supra is alleging. The PSC's general counsel says Miami-based Supra has jumped to false conclusions.

The accusations of misrepresentation have to do with the PSC's actions after a supervisor sent a draft of cross-examination questions to BellSouth on the eve of a hearing involving the two companies.

"Commission staff personnel engaged in criminal misconduct while attempting to cover up what they knew and when they knew it," states a letter Supra CEO Olukayode A. Ramos wrote on May 23 to State Attorney William N. Meggs.

Ramos' letter points to an Oct. 5 letter sent by PSC General Counsel — Harold McLean to Supra disclosing the commission had uncovered non-criminal wrongdoing by supervisor Kim Logue, who improperly sent the questions to BellSouth five months earlier, on May 2.

Supra says the sending of the questions was "intentionally" and "knowingly" concealed until after an evidentiary hearing on a second docket issue on Sept. 26-27.

"This information was kept a secret from Supra, by both BellSouth and senior commission personnel," Ramos' letter states. "A plan was devised to notify Supra after the close of the evidentiary."

McLean said Supra is misinterpreting actions as a cover-up.

"I think there is a presumption that it was a big deal and ought to have been immediately disclosed," he said. "To my mind it should have been immediately disclosed. [But] the people in question didn't sit on information they thought was important. It wasn't a big deal to them."

BellSouth spokesman Spero Canton said Supra's accusations fit in with ongoing tactics to delay a new agreement with his company.

Six who allegedly knew

Supra states at least six people had knowledge of the e-mail before a September hearing, including Marshall Criser, BellSouth's VP for regulatory affairs; Nancy Sims, BellSouth's director for regulatory affairs; Mary Bane, executive director of the commission; Walter D'Raeseler, a PSC director; Beth Salak, an assistant division director; and Sally Simmons, bureau chief for telecommunications.

Canton declined to comment about the BellSouth executives being named because the matter has been placed before the state attorney.

One of the purposes of McLean's Oct. 5 letter was to misrepresent when the commission's staff first learned of Logue sending the questions, Supra's letter states.

Supra says the evidence of the misrepresentation includes delaying the letter until after the close of the September hearing on the second

docket issue, which involves a key interconnection agreement between the companies, even though some commission staff members knew of Logue's conduct by July and all of them by the dates of the hearing.

"I certainly told them what I knew at that time," McLean said of his Oct. 5 letter. At that point, PSC inspector general John Grayson had not started an investigation.


Supra has said it raised the issue of bias because Logue attended the Sept. 26-27 hearing without Supra being informed of her misconduct.

Supra alleges another falsification occurred when an internal investigation report by Richard C. Bellak, commission staff legal counsel, was issued to McLean and misrepresented when Logue's misconduct happened.

"When the conduct was discovered, it was conspicuously omitted from Bellak's 'Internal Investigation and Report,'" Supra says. A copy of the report attached as an exhibit makes no mention of when the misconduct was discovered.

Bellak conducted "no meaningful investigation" because he didn't interview Logue, Sims or any of Logue's superiors, Supra says.

In raising the possibility of unlawful reward for official behavior, Supra points to "a high-level meeting" on Sept. 21 involving Bane, D'Haeseleer, Salak and Simmons.

Provided to state attorney Meggs as supporting evidence are handwritten notes by Grayson from a Nov. 2, 2001, interview with Simmons. A notation, without elaboration, states: "Walter/Beth>minimize damage." 

In a short telephone conversation this week, Grayson said his notes reflect what Simmons told him from direct and indirect knowledge, so that notation may have been her impression.

Other notes by Grayson say, "Middle Sept. Criser talked w/Bane, heightened sense of awareness." In another note, he refers to a Sept. 21 meeting followed by the notation "? - what is going to be done."

"For a while it was a mistake that happened no damage was done, it was going to be handled internally," Grayson recalled Simmons saying. "After that meeting, it appears there was a heightened level of importance, which is what she is telling me."

The notes then refer to Logue's resignation: "ask for resignation on 9/24. did noon on 25th. resignation rescinded if called to active duty before effective date of resignation/copy held by Dr. Bane."

Logue, an Air Force reservist, knew she was going to get called back to active duty, McLean said. The letter of resignation was not effective the day it was signed.

"She was not terminated because of the sharing of examination questions," McLean said. "As far as I know she is still on our payroll."

Logue was hired in October 2000 with a starting salary of \$53,200. She had 10 years of telecommunications experience with AT&T, Qwest and Telelobe.

After Logue was hired, a July 11 progress report memo to her by Simmons says the new supervisor fell behind on some of her cases in late May and early June, but was "very much on top" of the situation by July.

"I believe that the Supra/BellSouth complaint recommendation was a learning process, which turned out fine in the end," Simmons' memo states.

At the end of the report she cautioned Logue about using e-mails to address sensitive issues because a recipient *might react negatively*. She suggested Logue use in-person visits or telephone calls instead.

"in-person is better than telephone since body language can be important in discerning someone's reaction," Simmons wrote. "With an e-mail, misunderstandings or concerns can build up and create ill feelings and resentment."

Logue's phone mail was still active on Wednesday, explaining she was on active duty and providing instructions on which staffers to contact during her absence.

Dismissing an employee being called to active duty in the wake of Sept. 11 would have been a touchy subject, McLean said, especially in the wake of something else that happened.

"We had just had an innocent incident at the agency. We had an ops employee [a temporary type of position]. He had sent a patriotic message after Sept. 11. It was a global e-mail sent to all employees and that is something that is not permitted."

The employee was terminated and it was picked up by Tallahassee media, which portrayed the agency in a negative light, he said.

"I was sure I did not want an employee fired who is going off to active duty," McLean said.

A Sept. 21 e-mail by Logue told PSC officials her unit at Andrews Air Force Base had not yet been called to active duty in the first wave of mobilizations, but could be in a subsequent wave. An apparently subsequent exhibit, which is undated, says Logue was called to active duty Oct. 11.

But before she left, Logue sat in on the Sept. 26-27 hearing to arbitrate the key interconnection agreement, Supra says, without the company knowing about her misconduct in sending the cross-examination questions on the other docket.

"Kim Logue had no role in the second docket," McLean said.

Moreover, the attorney in the earlier cross-examination case didn't use most of her questions, McLean said. "It's not fair to take it as a given that Kim Logue's activities injured them [Supra] at all."

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You can view this article on the web at:

<http://south.floridabizjournals.com/content/stories/stories/002/06/10/story2.htm>

Exhibit "D"

From: Lila Jaber
Sent: Friday, March 01, 2002 10:13 AM
To: 'Michael Powell'
Subject: RE:

I could never be mad at you. I'll call you at 300 to discuss the other thing. Thank you.
lila

----- Original Message-----

From: Michael Powell (mailto:mpch@fcc.gov)
Sent: Friday, March 01, 2002 7:45 AM
To: LJaber@PSC.STATE.FL.US
Subject: Re:

Hey, how is it going? Sure, I think I have time today, but I am consumed in the morning.
Perhaps right at three.

I must regretfully tell you that I am unable to attend Searuc--now its your turn to be mad
at me :)

>>> Lila Jaber <LJaber@PSC.STATE.FL.US> 02/28/02 05:54PM >>>
Mr. Chairman,

Do you have any time in the next couple of days for a 5 minute phone call?
I've got a fla item (wouldbe a case of first impression) to run by
you--need to brainstorm. You available tomorrow or monday for a quick call?

so ...you still mad at me? you have to give me a chance to make it up to
you--I'll tell you what, if you come to miami on June 3d to speak at searuc,
I will find a way to make this up to you. :)

Your loyal do-bee...lila



From: Lila Jaber
sent: Tuesday, October 30, 2001 7:32 AM
To: 'kmartin@fcc.gov'
Subject: thank you

Commissioner Martin,

Thank you for meeting with me last week in DC. I really appreciated your **time** and willingness to **discuss** some of the issues critical to Florida. **As** you and I continue to discuss these issues, I realize that we are philosophically aligned on much of this. I really look forward to our continued work together. If we can ~~assit~~ assist You with anything, please do not heisitate to call me. In the meantime, I'll look forward to seeing you in Tallahassee in early February. Take care. Lila

EXHIBIT

"B"



From: Shoaf, Kathy [kathy.shoaf@myflorida.com]
Sent: Tuesday, October 30, 2001 8:49
To: Lila Jaber
Subject: RE: Greetings from Kevin Martin

Thank you, Lila.

Kathy

----- Original Message -----

From: Lila Jaber (mailto:LJaber@PSC.STATE.FL.US)
Sent: Tuesday, October 30, 2001 8:42 AM
To: Kathy Shoaf (E-mail)
Subject: FW: Greetings from Kevin Martin

Kathy,

For your convenience, here's the info we have: (202-418-0982-work); email kmartin@fcc.gov

----- Original Message -----

From: Shanahan, Kathleen (mailto:kathleen.shanahan@myflorida.com)
Sent: Tuesday, October 30, 2001 8:17 AM
To: 'Lila Jaber'
cc: Shoaf, Kathy
Subject: RE: Greetings from Kevin Martin

I will contact him

I would love to catch up w/him...

Kathy - pls call his office - see when he gets in town and if he is free for dinner the night before or breakfast or lunch....Kevin Martin at FCC

----- Original Message -----

From: Lila Jaber (mailto:LJaber@PSC.STATE.FL.US)
Sent: Tuesday, October 30, 2001 8:10 AM
To: 'kathleen.shanahan@myflorida.com'
Subject: Greetings from Kevin Martin

TEB Bush's secretary

Kathleen,

Commissioner Martin at the FCC wanted me to say hello to you on his behalf. He said that you and he worked on the campaign together. He's been a real ally to Florida. I met with him last week in DC and he's been following our telephone issues and agrees with our approach. He will be in Tallahassee on Feb. 6th. It might be good if you and the Gov met with him briefly in Feb. That relationship will be important especially because the FCC has to give the ultimate approval for Bellsouth's application to provide long distance service in Florida. The FCC wouldn't get the application until mid April, (tentative date) but still, it might be good to touch base with him in Feb to reinforce that Florida wants these markets open. Let me know if you want me to follow up with scheduling. Thank you. Lila

Before the Section 221 Review

after FPSC voted to deny CLEC evidentiary contract breach against Bellsouth.



ATTY exhibit E

CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

CASE NO.: 00: 20709 CA 01

SANDRA L. PADRON,

Plaintiff,

vs.

BELLSOUTH, TELECOMMUNICATIONS,
INC., a foreign corporation authorized to do
business in Florida,

Defendant.

JURY TRIAL
DEMAND
THE ORIGINAL FILED
IN THE OFFICE OF

CLERK CIRCUIT & COUNTY COURTS
DADE COUNTY, FLORIDA
ON AUG 24 2000 Mm 1

COMPLAINT

This is an employment case under Florida's private sector Whistleblower's Act arising out of Defendant's unlawful sales activities and wrongful termination of plaintiff, and brought to provide appropriate relief to plaintiff who was adversely affected by such activities. Plaintiff sues the defendants and alleges the following:

JURISDICTION AND VENUE

1. **This** action seeks damages in excess of fifteen thousand (\$15,000.00) dollars. exclusive of interest, costs and attorney's fees and is within the jurisdiction of this Circuit Court.
2. Venue is proper in this county pursuant to §§ 47.011 and 448.103(1)(b) of the Florida Statutes because the alleged unlawful activities and retaliatory personnel action occurred in Miami-Dade County, Florida.

PARTIES

3. Plaintiff SANDRA L. PADRON ("PADRON") is am iuris, and a resident of the State of Florida.

4. The defendant, BellSouth Telecommunications, Inc. (hereinafter "BELLSOUTH"), is a Georgia corporation authorized to do business in Florida. BELLSOUTH has been carrying on employment **and** continuously doing substantial business in the State of Florida, and is engaged in providing, among others, telecommunication and wireless communication services to residential customers in the state of Florida.

CONDITIONS PRECEDENT

5. All conditions precedent to the maintaining of this action have been satisfied or waived.

HISTORY OF FRAUDULENT PRACTICES

6. Since at least 1989, BELLSOUTH is known to **have** created, promoted and sustained a **work** environment that sewed to foster and reward deceptive and fraudulent **sales** practices in violation of **law**.

7. BELLSOUTH'S unlawful employment practices **and** fraudulent sales activities were originally **the subject matter** of a federal class action lawsuit styled Davis v. Southern Bell Tel & Tel. Co., Case No 89-2839-CIV-NESBITT (S.D. Fla.) (hereinafter the "**Class Action**"). The Class Action **alleged** BELLSOUTH **systematically** defrauded its customers by **using**, among other things, "boiler room" **sales** techniques that pressured **employees** into **signing up** thousands of **customers for services**, and selling them products, they **never** ordered. The **Class Action charged** BELLSOUTH with billing customers for a phone-line maintenance plan, **although** subscribers **had never requested**

it and BELLSOUTH never told them it **was** optional. BELLSOUTH was further charged with implementing high-pressured sales programs where employees could win cash and prizes for the products and services *they* sold.

8 The *practice* of placing unauthorized charges on customer bills is commonly known among BELLSOUTH sales personnel **as** "cramming." BELLSOUTH'S sales program served to foster **and** reward the deceptive **and** fraudulent "cramming" practices made the basis of the **Class** Action.

9. In around 1991, the State of Florida intervened in the Class Action as a class plaintiff and the suit was settled in September 1994.

10. Meanwhile, in 1991 the Statewide Prosecutor's Office began investigating BELLSOUTH'S billing **and** sales practices in a **grand jury** probe of criminal fraud allegations against the company (the "Criminal Investigation"). **Like the** Class Action, *the* Criminal Investigation *charged* BELLSOUTH with deliberately misrepresenting the optional nature of its services, routinely charging for services customers did not order and subsequently **failing to** reimburse customers for **erroneous** billings. On October 9, 1992, the Statewide Prosecutor's Office and BELLSOUTH **settled the** Criminal Investigation and **entered** into a settlement agreement (hereafter the "Settlement Agreement"), wherein BELLSOUTH stipulated to the mandates of the Statewide Prosecutor's Office.

11. **Pursuant to the** Settlement Agreement. BELLSOUTH agreed, among other things, to implement new billing practices, anti-fraud measures and **ethics training** for employees, to **ensure** that BELLSOUTH would not engage in fraudulent cramming practices or **any other** similarly illegal

or deceptive practice in the future.

12. Consistent with the basic objectives of the Settlement Agreement, BELLSOUTH stipulated to the following mandates:

...[BELLSOUTH] agrees it will not engage in a practice of falsifying information required by the Florida Administrative Code to be reported to the Florida Public Service Commission, in a practice of causing Florida subscribers to be billed for services that the subscribers did not order, or in a practice of causing Florida subscribers to receive a credit or refund **that is** less **than that** to which subscribers are entitled...

...if [BELLSOUTH] discovers **that any** of its employees have ~~✱~~ engaged ~~or are~~ engaging in the practices described above, [BELLSOUTH] will identify such employees and such practices to the [Statewide Prosecutor's] Office...

...employees or former employees shall not be disciplined or ~~✱~~ terminated in whole or in **part at** any time, for their testimony, whether **voluntary** or compelled, or for the ~~fact~~ of their cooperation with the Office; with my other Florida **agency** involved in the investigadon, unless such employee violated written company policy or knowingly gave false material information during the course of such cooperation.

13. Based upon its history of fraudulent sales practices and in consideration of the mandates of the Settlement Agreement, **BELLSOUTH knew that** any future fraudulent or deceptive practices, or retaliation taken against its employees for **their** legitimate attempts to prevent such practices, would subject it to further claims and investigations.

14. In addition to the above, the Statewide Prosecutor's Office agreed to monitor BELLSOUTH for a five-year **period**, beginning in October 1992 (the "Oversight Period"). During this Oversight Period, **BELLSOUTH** became obligated to comply with the mandates of the

Settlement Agreement including making disclosures to residential customers regarding the products and services it **was** selling. In particular, BELLSOUTH stipulated to the following:

... to communicate clearly to customers the optional nature of each optional service that sales personnel recommend or a customer orders, **as well as** a clear description of each optional service recommended or ordered, and the **rare** charged for each such service.

15. **At** all relevant times before and during the Oversight Period, PADRON **was** employed and working **as** a customer sales representative **for** BELLSOUTH and had knowledge of the fraudulent and deceptive sales practices made the basis of the **Class** Action and Criminal Investigation against BELLSOUTH and she had **personal** knowledge of the compliance procedures implemented **by** BELLSOUTH pursuant to the Settlement Agreement.

16. BELLSOUTH employed plaintiff PADRON beginning in February 1990 **as** a customer ~~service~~ representative to provide sales **and** customer services on behalf of BELLSOUTH in its primary business of providing local telecommunications, internet, digital, **data**, and wireless services to residential establishments throughout **the** United States.

17. Beginning in 1996, PADRON **was transferred** to BELLSOUTH'S English Group to perform residential sales, and then became employed **as** a as a customer service representative in BELLSOUTH'S Consumer Services, Multi-Lingual Marketing Department. Since **at** least 1996, PADRON was employed **and working as** a customer **service** representative in BELLSOUTH'S Multi-Lingual Marketing Department.

18. For the next four (4) years and **at all times during her employment, plaintiff**

PADRON'S work performance either met or **sxceeded** BELLSOUTH'S reasonable expectations, and she received commensurate annual **pay raises** and incentive bonuses. In the **first** seven (7) years of her employment, PADRON received no verbal or written reprimands regarding her work performance.

19. PADRON'S employment troubles began, however, *in* approximately January 1998, almost immediately upon expiration of the Oversight Period. **At the time**, PADRON obtained competent **and** reliable information **that** BELLSOUTH **was**, and since **the** expiration of **the** Oversight Period had been, abandoning **its** compliance **and** ethics programs, **as** well as its disclosure procedures, once mandated by the Settlement Agreement, and reintroducing its "boiler room" sales and cramming tactics—tactics designed to push unwanted products and services on customers.

20. PADRON learned that BELLSOUTH **began** committing **the** following almost immediately upon expiration of **the** Oversight Period:

- a. Imposed unreasonably high **sales** quotas **on** sales personnel and threatened personnel with termination for not meeting **sales** quotas;
- b. Introduced telephone time resuictions on **sales** personnel **per** call, which prevented **sales** personnel from addressing customer needs **and** **communicating** the description and optional nature of its "packaged" products and services;
- c. Added packaged phone **services** to **customers** lines at higher raws, which contained optional services the customer neither ordered **nor** needed;
- d. Failed to inform customers about **the** **optional** nature of the packaged services and of **the** availability of purchasing oprional services, a **la carte**, at reduced **rates**;

- e. Provided descriptions of enhanced services which made them sound like basic telecommunications services; and
- f. Misrepresented that enhanced services were included ~~at~~ the same ~~rate~~ as part of "packaged" services.

21 In furtherance of this fraudulent scheme, defendant BELLSOUTH committed the following

- a. Continued to provide and charge for optional services after the customer called to request the service be discontinued;
- b. Systematically gave false and misleading information to customers that the **packaged** services containing numerous optional services were basic services required in order to obtain basic telephone service;
- c. Sent telephone equipment and products to customers who never ordered them;
- d. **Added optional** services to residential phone lines without customer knowledge in such ways as not to alert the customer such service had been added;
- e. Provided **false** information to customers **inquiring** about basic service and intentionally misrepresented material facts to customers to deceive **them into** purchasing services they did not need, or never ordered; and
- f. Intentionally failed to disclose the unlawfulness of such conduct to its ~~employees~~;

22. In short, PADRON learned BELLSOUTH had returned to its old ways of creating, promoting and ~~sustaining an~~ atmosphere that served to foster and reward fraudulent and deceptive practices. Witnesses confirmed that BELLSOUTH'S "cramming" practices served to conceal the

true nature and description of services from customers in an unlawful effort to increase company sales, at customer expense.

23. BELLSOUTH knew that sales personnel, in an effort to meet its high sales quotas and in order to win cash and prizes, were engaged in unlawful practices as described more fully in the paragraphs above. At all times material herein, BELLSOUTH ratified the unlawful acts of its sales personnel and took no corrective or appropriate action to remedy the unlawful conduct.

24. Such actions are in violation of law, rule and regulation.

25. Where BELLSOUTH was once obligated, pursuant to the mandates of the Settlement Agreement, to "communicate clearly" the optional nature and description of each service it sold, in around 1998 BELLSOUTH introduced "packaging," the bundling together of optional and required services together for one flat rate. BELLSOUTH introduced "packaging" with the intended purpose and effect of further deceiving its residential customers.

26. Beginning in mid-1998, BELLSOUTH began reprimanding PADRON, as well as other sales personnel, for not meeting sales quotas. BELLSOUTH threatened PADRON with termination if she did not meet her quotas.

(27.) Based upon the years of litigation, the terms of the Settlement Agreement with the Statewide Prosecutor's Office, and her knowledge of the fraudulent and deceptive sales practices occurring at BELLSOUTH, PADRON, in January 1999, had a reasonable and good faith belief that BELLSOUTH was engaged, once again, in unlawful and deceptive practices, which practices had the purpose and effect of: a) defrauding BELLSOUTH customers into paying for services they did not order in violation of law; and b) misrepresenting material facts to and/or conceding material

facts from customers ~~in~~ violation of law.

28. In **January** 1999, PADRON, in good faith belief that ~~the~~ fraudulent and deceptive activities, as alleged more fully above, were in violation of law, **rule** and regulation, informed BELLSOUTH that she **opposed** and ~~refused~~ to participate in such practices, and requested that ~~they~~ be fully investigated, to no avail.

29. In May 1999, **PADRON**, in good ~~faith belief that~~ BELLSOUTH'S fraudulent ~~and~~ deceptive sales activities, as ~~alleged~~, were in violation of law. rule and **regulation**, notified BELLSOUTH, in writing, of her opposition to such practices and requested they be fully ~~investigated~~. PADRON provided BELLSOUTH a reasonable ~~opportunity~~ to investigate ~~and~~ correct the **unlawful** practices.

(30) In or around May 1999, instead of correcting or remedying the practices, BELLSOUTH intimidated PADRON and attempted to coerce her into withdrawing her complaint, and displayed a course of conduct consisrent with wanting to terminate her in retaliation for opposing and refusing to participate in such ~~unlawful~~ practices.

(31) On or about **June 3**, 1999, after providing BELLSOUTH a **reasonable and** good ~~faith~~ opportunity to investigate and ~~correct~~ the unlawful practices, **without success**, PADARON disclosed, in writing, BELLSOUTH'S deceptive ~~and~~ unlawful employment pracnces to the Public Service Commission.

32. In July 1999, BELLSOUTH ordered PADRON to a meeting. During ~~the meeting~~, BELLSOUTH questioned PADRON on the complaint to the **Public** Service Commission.

(33) ~~On~~ August 24, 1999, after ~~ten~~ (10) yeas of dutiful employment, BELLSOUTH

terminated plaintiff PADRON'S employment, without *cause or justification* or prior warning

34. The reason give by BELLSOUTH for PADRON'S termination was false, and served as a pretext for unlawful retaliation.

35. PADRON has retained the undersigned **attorneys to** represent her in **this action and** is obligated to pay them a reasonable **attorney's** fee for their services.

WHISTLEBLOWER VIOLATION

Plaintiff PADRON adopts and by reference thereto realleges paragraphs 1 through 35 above as though fully set forth herein.

36. This action is authorized and instituted pursuant to Florida's private sector Whistleblower's Act, § 448.103 (1), Fla. Stat. (1991) (the "Act").

37. At all relevant times, defendant BELLSOUTH has been an employer for purposes of section 448 101 of the Act, § 448.101(3), Fla. Stat. (1991).

38. As alleged in greater detail above, defendant BELLSOUTH engaged in a pattern and practice of **unlawful** sales practices, which practices are in violation of **law**, rule and regulation

39. As soon as plaintiff PADRON became aware of such unlawful practices, PADRON, in writing, voiced **opposition to and** refused to participate in such practices and threatened to disclose BELLSOUTH to the appropriate government agencies. PADRON afforded BELLSOUTH a reasonable opportunity to investigate and correct its unlawful practices.

40. Upon BELLSOUTH'S failure to investigate and take any remedial action, PADRON disclosed BELLSOUTH'S unlawful practices to the appropriate governmental agency, in writing, to initiate an investigation.

41. As soon as PADRON engaged in the protected activity described in & paragraphs above, defendant **BELLSOUTH** terminated plaintiff PADRON'S employment.

42. PADRON was discharged for a) voicing opposition to the fraudulent and deceptive sales practices; b) ~~for her efforts to require~~ **BELLSOUTH to operate in** compliance with state laws, c) for her efforts and attempts to exercise her ~~rights~~ to oppose and refuse to participate and/or engage in such unlawful actions; and d) for disclosing BELLSOUTH'S unlawful practices to the Public Service Commission.

43. No other reasonable cause or justification existed to discharge PADRON ~~from~~ her employment.

44. The reasons **given** by defendant BELLSOUTH for PADRON'S termination are ~~false~~, and served as a pretext for unlawful retaliation under the Act.

45. By wrongfully *discharging* PADRON without cause or justification, and ~~for~~ the retaliatory reasons set forth above, BELLSOUTH acted willfully and with malice toward PADRON.

46. As a direct, foreseeable and proximate result of **the wrongful and unlawful** retaliatory personnel action ~~against~~ PADRON including, but **not** limited to, ~~her termination~~, plaintiff PADRON has suffered **loss of** her employment, the loss of her **salary and benefits**, damage to her reputation and future earning potential, and emotional and mental **harm**.

WHEREFORE, plaintiff PADRON respectfully requests that ~~this Court~~ enter **an** order awarding any and all damages provided by §448.103 of the **Florida Statute** including, but **not** limited to:

- a. Order BELLSOUTH to make PADRON whole by providing appropriate **back pay with**

- prejudgment interest, in amounts to be determined at *trial*, and other affirmative relief necessary to compensate Plaintiff for her losses including, but not limited to, front pay.
- b. Order BELLSOUTH to *make* PADRON whole by *providing* compensation for past and future pecuniary losses resulting from ~~the~~ unlawful employment practices described above, including past and future out of pocket losses, in ~~amounts~~ to be determined at trial;
- c. Order BELLSOUTH to ~~to~~ make PADRON **whole** by providing non-pecuniary compensatory **damages** for mental **pain** and suffering, **anguish**, loss of enjoyment **of life** and other non-pecuniary losses;
- d. Order BELLSOUTH to **pay PADRON'S costs** including a reasonable attorney's fee pursuant to § 448.104 of the Florida Statutes;
- e. Grant **such further** relief including declaratory relief **and any** other compensatory **damages** allowable at law, as the court deems necessary and proper.

JURY TRIAL DEMAND

PADRON requests a mal by jury on all issues of fact raised by this complaint.

Dated this 24th day of August 1999.